

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	CUID Nos.	CT0005 (Prospect)
)		CT0007 (Wolcott)
Marcus Cable Associates, LP)		CT0009 (Waterbury)
)		CT0010 (Middlebury)
Petition for Reconsideration)		CT0011 (Plymouth)
and Refund Plans)		

**ORDER ON RECONSIDERATION
AND REFUND PLAN ORDER**

Adopted: March 4, 2002**Released: March 5, 2002**

By the Deputy Chief, Cable Services Bureau:

1. In this Order we consider a petition for reconsideration and refund plans filed by the operator ("Operator") referenced above. We have already issued orders that granted complaints filed against the rates charged by Operator for its cable programming services tier ("CPST") in the communities referenced above ("Rate Orders").¹ Subsequently, we issued an order in which we found Operator's refund plans, filed in response to our Rate Orders, unacceptable ("Refund Order").² Operator filed its petition for reconsideration ("Petition") of our Refund Order on November 3, 1997 along with revised refund plans. This Order addresses Operator's Petition and refund plans.

2. Under the Communications Act,³ at the time the referenced complaints were filed, the Commission was authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992⁴ ("1992 Cable Act") required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The filing of a complete and timely complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁵ The Operator has the burden of demonstrating that the CPST rates complained about are reasonable.⁶ If the Commission finds a rate to be unreasonable, it shall determine

¹ See In the Matter of Sammons Communications, Inc. DA 95-313, 10 FCC Rcd 3846 (1995). See also, In the Matter of Marcus Cable Associates, LP, DA 96-2125, 11 FCC Rcd 22102 (1996).

² See In the Marcus Cable Associates, LP, DA 97-2101, 13 FCC Rcd 7069 (1998).

³ Communications Act, Section 623(c), *as amended*, 47 U.S.C. §543(c) (1996).

⁴ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁵ See Section 76.956 of the Commission's rules, 47 C.F.R. §76.956.

⁶ *Id.*

the correct rate and any refund liability.⁷

3. In its Petition, Operator argues that it should have been allowed to raise the issue of inter-tier offsets for the first time when it filed its original refund plans. Because, in this Order, we reject Operator's request for offsets on substantive grounds, we find this argument to be moot and decline to address it. In its Petition, Operator also argues that it should be permitted to offset its past CPST overcharges with its past basic service tier ("BST") undercharges. This is essentially the same argument advanced by Operator with its original refund plans. We have consistently rejected this argument and we reject it again now. The Commission addressed the issue of inter-tier offsets in *Cencom Cable Income Partners ("Cencom")*.⁸ In *Cencom*, the Commission determined that such inter-tier offsets are "inconsistent with the Commission's conclusion in the [Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, MM Docket 92-266, Report and Order and Further Notice of Proposed Rulemaking]⁹ that cable operators should not balance low BST rates with CPST rates that exceed the maximum permitted rate for the tier."¹⁰ Therefore, we will not allow Operator to offset its CPST overcharges with its BST undercharges.

4. Our review of Operator's refund plans reveals that Operator filed a refund plan that did not include inter-tier offsets ("Refund Plan I") and a refund plan with inter-tier offsets ("Refund Plan II"). For the reasons discussed above, we review only Operator's Refund Plan I.¹¹ Our review reveals that the refund plan fulfills the requirements of the Refund Order provided Operator accrues interest up to the date of the refund and includes franchise fees, if any, and interest on the franchise fee principal amount.

5. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. § 1.106, that Operator's petition for reconsideration IS DENIED.

6. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 of the Commission's rules, 47 C.F.R. § 0.321 and § 76.962, that Operator's Refund Plan I IS APPROVED AS MODIFIED HEREIN, and that Operator implement its refund plan within 60 days of the date of this Order.

⁷ See Section 76.957 of the Commission's rules, 47 C.F.R. § 76.957.

⁸ See *In the Matter of Cencom Cable Income Partners II, LP*, 12 FCC Rcd 7948 (1997).

⁹ 8 FCC Rcd 5631 (1993).

¹⁰ *Cencom* at ¶22 (footnote omitted).

¹¹ Operator calculated a total refund liability of \$46,112.00, including interest to January 1998.

7. IT IS FURTHER ORDERED, pursuant to Sections 0.321 and 76.962 of the Commission's rules, 47 C.F.R. §0.321 and §76.962, that Operator file a certificate of compliance with the Chief, Cable Services Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Cable Services Bureau